

Barton's jurisdictional area consists of all states west of the Mississippi except for Minnesota, Iowa and half of Missouri (Tr. 343). His duties include enforcing the Part 40 regulations (Tr. 331). Barton's office has written letters to various mines concerning steps that need be taken to comply with Part 40 (Tr. 331, 332).

When changes are made in Part 40 filings by individual mines MSHA accepts such changes as a matter of course and enters them as part of the official MSHA file (Tr. 332). On occasion mines have been directed to use MSHA forms (Tr. 333). Barton identified the form prepared in his office. It was prepared as a convenience for miners' representatives (Tr. 333, 334).

Barton considers Part 40 to be a procedure available to mine workers. However, in accordance with the Secretary's directions, MSHA is told to take a very broad view of miners participation rights (Tr. 343, 344, 356). Portions of the Part 40 regulations use the term "shall", (Tr. 356) but the witness believed the wording in the preamble instruct him how to interpret the regulation (Tr. 357). In Barton's opinion Inspector Boston acted correctly (Tr. 358).

Section 103(f) is a general provision of the Act that allows a non-employee miners' representative to travel with the representative of the Secretary (Tr. 335, 350). Such an individual is not an employee of the agency but is present to assist the MSHA inspector (Tr. 350). The regulations state that participation by a miners' representative cannot interfere with the active completion of the inspection. The inspector has authority under the law to prevent a representative from further traveling with him (Tr. 351). MSHA encourages the representatives to have some input into the inspections (Tr. 351). Barton only knew of one instance where an intentional representative of the UMWA was denied access to a mine (Tr. 349).

In Barton's understanding, the Act and its regulations seek to encourage miners to participate and to bring forth people who would best serve the purpose on any particular inspection (Tr. 349). This evolves from the fact that miners at an individual mine do not have a great amount of experience and therefore outside representation and wider experience can be of great benefit to the rank and file members (Tr. 349, 350). The miners representatives are chosen at the discretion of the employees at the mine (Tr. 335, 336). Such discretion can be exercised by submitting the form or by submitting a miners' representative when the inspector arrives at the mine (Tr. 336). The preamble in Government Exhibit 3 (the Secretary's bulletin of July 7, 1978) states, in part, that "it should be noted that miners and their representatives do not lose their statutory rights under § 103(f) by their failure to file as a representative of the miners under this part" (Tr. 336),